

## REMARKS

### *Status of the Claims*

The non-final Office Action mailed on April 18, 2008 addresses claims 1, 3, 5, and 7-9. Reconsideration is respectfully requested based on the following remarks.

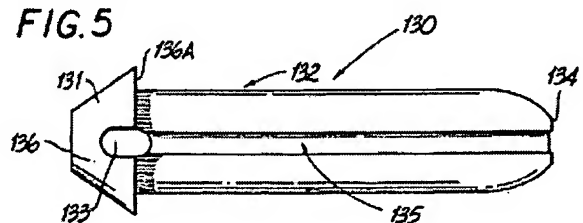
### *Rejections Pursuant to 35 U.S.C. §102*

#### U.S. Patent No. 5,480,403

Claims 1, 3, 5, and 7-9 are rejected pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,480,403 of Lee et al. ("Lee"). Applicant respectfully disagrees.

Independent claim 1 recites a cross-pin of biocompatible material and including an elongated member having a proximal end, a distal end, a longitudinal axis, and an outer surface. A nose member extends out from the distal end of the elongated member and has a proximal end and a distal end. An axial trough in the elongated member extends through the outer surface and has a proximal end, a distal end, a bottom, opposed ends, an open top, and a passageway. The cross-pin also includes a guide wire opening in the distal end of the nose member and an interior tunnel having a passage with an enclosed circular perimeter in the nose member extending from the guide wire opening and extending into the trough such that the passage is in communication with the guide wire opening and the trough. A guide wire is seated in the axial trough and extends through the interior tunnel and the guide wire opening.

Lee does not disclose a nose member having proximal and distal ends and a guide wire opening in the *distal end* of the nose member. Rather, it is clear from Figure 5, reproduced below, that the aperture 133 is not in the flat, distal end 136 of the distal tip 131 but instead is at the distal tip's *proximal end* 136A. Whatever the Examiner considers to be the nose member in Lee, no portion of the aperture 133 is located in the distal end 136. Moreover, the aperture 133 could not be located at the flat, distal end 136 because the "aperture 133 extends transverse to the longitudinal axis of the pin 130." (Col. 3, lines 39-40.)



Additionally, Lee fails to teach a *guide wire* seated in the axial trough and extending through the interior tunnel and the guide wire opening. The aperture 133 and the slot 135 seat a suture. Applicant

respectfully disagrees with the Examiner and asserts that a suture is not a guide wire as this term is generally understood by a person having ordinary skill in the art.

Accordingly, independent claim 1, as well as claims 3, 5, and 7-9 which depend therefrom, distinguish over Lee and represent allowable subject matter.

U.S. Patent No. 6,579,295

Claims 1, 3, and 7-9 are rejected pursuant to 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,579,295 of Supinski ("Supinski"). Applicant respectfully disagrees.

Supinski does not disclose a guide wire seated in the axial trough and extending through the interior tunnel and the guide wire opening. The Examiner asserts on pages 3-4 of the present Office Action that the guide pin 110 is "seated in the axial trough" due to the hole it passes through being located within the space (trough) defined by the cutout of the interpreted cross pin." However, the guide pin hole 88 is not part of the axial trough because, as recited in claim 1, the trough has an open top. As seen in a front view of Supinski's device in Figure 5, reproduced above, the

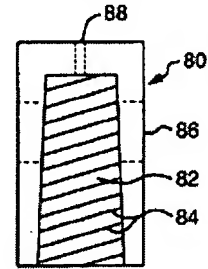


FIG. 5

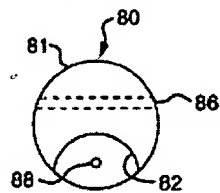


FIG. 7

recess 82 has an open top while the guide pin hole 88 is an interior tunnel within the anchor 80. As clearly shown in Figure 7 of Supinski, reproduced at left, the guide pin hole 88 in the anchor 80 is offset a distance from the recess 82. When the screw 100 is screwed onto the recess 82 of the anchor 80, as shown in the excerpt of Figure 4 at right, the guide pin 110 attached to the screw's distal end is never *seated in* the recess 82. Instead, the guide pin 110 is offset a distance from the side of the screw 100 so as to align with and advance through the guide pin hole 88. Being rigid, the guide pin 110 is not seated in the recess 82 and cannot flex to be seated in the recess 82. Thus, although the guide pin 110 extends through the guide pin hole 88, the guide pin 110 is not also seated in the recess 88. In contrast, as shown for example in Applicant's Figures 1 and 2 reproduced below, a cross-pin 5 has an axial trough 70 with an open top 79 and an interior tunnel 100 extending through the cross-pin's nose member 50. As shown in an excerpt of Figure 5, also reproduced below, a guide wire 120 can be seated in the axial trough 70 and pass through the passage 102 to extend through the interior tunnel 100.

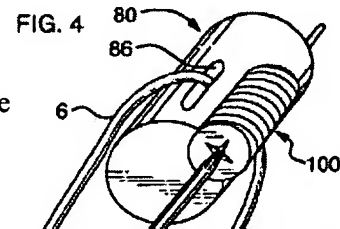
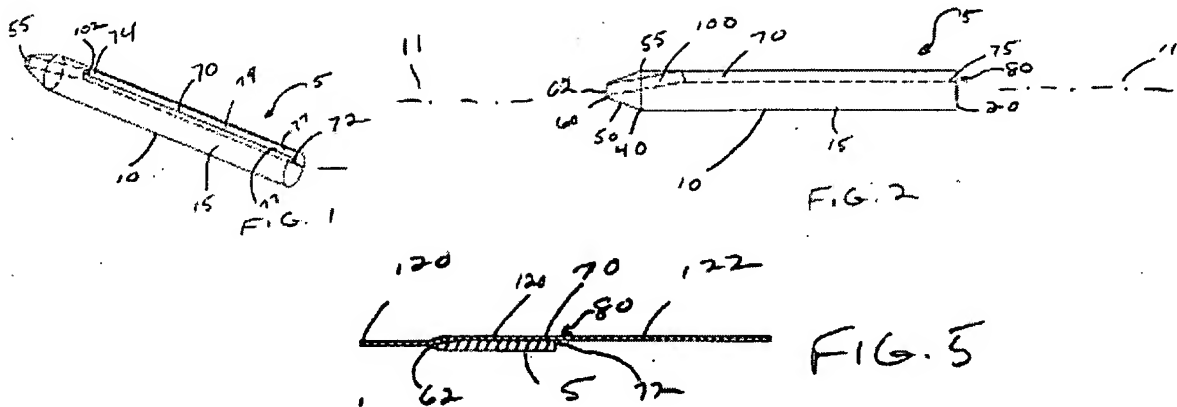


FIG. 4



Moreover, Supinski fails to teach a *guide wire* seated in the axial trough and extending through the interior tunnel and the guide wire opening. Applicant respectfully disagrees with the Examiner and asserts that a rigid guide pin attached to a screw is not a guide wire as this term is generally understood by a person having ordinary skill in the art.

Accordingly, independent claim 1, as well as claims 3 and 7-9 which depend therefrom, distinguish over Supinski and represent allowable subject matter.

#### **Conclusion**

Applicant submits that all claims are in condition for allowance for at least the reasons discussed above, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicant if such communication is deemed to expedite prosecution of this application.

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Respectfully submitted,

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